

BOARD OF APPEALS CASE NO. 5357	*	BEFORE THE
APPLICANT: William Dolinger	*	ZONING HEARING EXAMINER
REQUEST: Variance to allow an attached garage within the required setbacks; 4004 Conowingo Road, Darlington	*	OF HARFORD COUNTY
	*	Hearing Advertised
	*	Aegis: 5/21/03 & 5/28/03
HEARING DATE: July 23, 2003	*	Record: 5/23/03 & 5/3/03
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ZONING HEARING EXAMINER'S DECISION

The Applicant, William Dolinger, is requesting a variance, pursuant to Section 267-39B, Table XII, and Section 267-23A(5), of the Harford County Code, to allow an attached garage within the required 10 foot side yard setback (proposed average of 6.8 feet) and required 60 foot from an arterial road (proposed 59 foot) in a B3 District.

The subject parcel is located at 4004 Conowingo Road, Darlington, Maryland 21034, in the Fifth Election District, and is more particularly identified on Tax Map 19, Grid 4E, Parcel 451. The parcel contains approximately 0.72 acres more or less.

The Applicant, Mr. William Dolinger, appeared and testified that he is the owner of the subject property. He stated that he had read the Department of Planning and Zoning's Staff Report, and had no changes or corrections to the information contained therein. Mr. Dolinger described his property as a rectangular shaped lot, which is narrower than it is long. The property is improved by a modular dwelling, a paved circular driveway, and two handicapped ramps which provide access to both the front and back doors of the existing dwelling.

The Applicant stated that he is a disabled veteran who is confined to a wheelchair. He proposes to construct a 26 foot by 32 foot garage, in which to park his wheelchair accessible van and truck. According to the witness, being able to park inside would provide protection from the elements when he enters or leaves his home during inclement weather. In order for the proposed garage to line up with the existing handicap ramps, it would need to extend 5.7 feet beyond the dwelling and into the required setbacks.

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The next witness to testify on the Applicant's behalf was his brother, Kenneth Dolinger. The witness indicated that he lives in Chesapeake City, Maryland, and that although the Applicant does receive some help from neighbors, he has no other relatives who live close enough to help him clear snow from his sidewalk during the winter months. The proposed garage would provide the Applicant with improved access between his home and van during times of bad weather.

According to the witness, the proposed garage is shown on the site plan, designated as Attachment 3, to the Department of Planning and Zoning's Staff Report. As indicated on that plan, the side wall of the garage would be approximately 6 feet 8 inches from the side property line, and the front wall of the garage would be located 59 feet from an arterial road (Conowingo Road). According to the witness, the existing circular driveway is not shown on the site plan, which was drawn prior to the construction of the existing modular home or the circular drive.

The witness next described several of the photographs, designated as Attachment 7 to the Department of Planning and Zoning's Staff Report. According to Kenneth Dolinger, the top photograph shows the front of the modular dwelling and the existing circular drive. The second and third photographs depict the side of the dwelling, the concrete parking pad on which the proposed garage would be built, and the existing handicap ramps. The third photograph shows the location where the existing handicap ramps will meet the proposed garage. The witness also indicated that the existing ramps would be modified only slightly, when the proposed garage is constructed. The front ramp will be shortened somewhat, and the side ramp will end inside of the garage, 4 feet from the front wall, leaving the Applicant room to navigate his wheelchair around the ramp. The witness introduced a scale drawing of the interior of the proposed garage, with yellow paper taped to the drawing to indicate the dimensions of the vehicles which will be parked therein. This exhibit was introduced to illustrate that the Applicant would be unable to park his wheelchair accessible van in the garage, and still navigate his wheelchair from the van to the handicap ramp if the garage were any smaller than the proposed dimensions.

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The witness testified that the Applicant's home is located within the Darlington neighborhood, and that there are similar garages located within that community. He also indicated that the Applicant's next door neighbor has an attached garage which is larger than the one Applicant proposes to build. Finally, the witness testified that the proposed garage will be compatible with both the existing dwelling and with other homes in the neighborhood, and that it will not have any adverse impact on adjacent properties.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. The witness pointed out that if the proposed garage extends the requested 5.7 feet beyond dwelling, the front yard setback will be reduced to 59 feet, requiring only a 1 foot variance. He also testified that reducing the side yard setback to the requested 6.8 foot average would require only a 1 foot 6 inch variance.

Mr. McClune indicated that the Department found the subject property to be unique, both because of its long narrow shape, and because the house is placed at an angle on the lot. He also stated that in his opinion, the proposed addition will have no adverse impact on neighboring properties, because there are no uniform setbacks along U.S. Rt. 1 in this area, and hence, there is no uniform streetscape. He also testified that many dwellings in the vicinity of the Applicant's property are located only 20 to 30 feet from Conowingo Road (U.S. Rt. 1). According to the witness, the Department recommended approval in its June 9, 2003 Staff Report, subject to the conditions set forth in that Report.

No witnesses appeared in opposition to the requested variance.

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CONCLUSION

The Applicant, William Dolinger, is requesting a variance, pursuant to Section 267-39B, Table XII, and Section 267-23A(5), of the Harford County Code, to allow an attached garage within the required 10 foot side yard setback (proposed average of 6.8 feet) and required 60 foot from an arterial road (proposed 59 foot) in a B3 District. The proposed addition would reduce the side yard setback to an average of 6 feet 8 inches, and the distance from an arterial road would be reduced to 59 feet.

Harford County Code Section 267-39B, Table XII: Design Requirements For Specific Uses in a B3 General Business District, provides for a minimum 10 foot side yard width.

Section 267-23A(5) of the Harford County Code reads as follows:

“Yards along collector and arterial roads. In the event that residential lots abut one (1) or more collector or arterial roads, the required front yard from the right-of-way of such roads shall be forty (40) feet from a collector road and sixty (60) feet from an arterial road.”

Code Section 267-11 permits the granting of variances, stating:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if a peculiar characteristic or unusual circumstance, relating only to that property, causes the zoning ordinance to impact more severely on the property than on surrounding parcels. Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. This involves a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The parcel is a long narrow lot with frontage on Conowingo Road (U.S. Rt. 1). There are no uniform setbacks along Conowingo Road (U.S. Rt. 1), and many of the dwellings in this vicinity are constructed only 20 to 30 feet from the road. Thus, the first prong of the Cromwell test has been met.

Having found that the subject property is unique, it must next be determined whether denial of the requested variance would create unreasonable hardship or practical difficulty for the Applicant. The Hearing Examiner finds that literal enforcement of the Code would result in unreasonable hardship for the Applicant in this case. Mr. Dolinger is a disabled veteran who is confined to a wheelchair. He needs an attached garage to provide additional safety when entering and exiting his dwelling during times of inclement weather. The proposed location is the only place on the property where an attached garage can be constructed to line up with the Applicant's existing handicap ramps, and not interfere with the well and septic system. In addition, if the dimensions of the proposed garage were reduced, the Applicant would not have room to navigate his wheelchair inside the structure to move between his van, and the existing handicap ramp.

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Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of the Code or the public interest. The proposed garage will be compatible with both the existing dwelling and with other properties in the neighborhood. Furthermore, other houses along Conowingo Road (U.S. Rt. 1) have attached garages, including the house next door to Applicant's residence.

The Hearing Examiner recommends approval of the Applicant's request, subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed construction.
2. That the Applicant not encroach further into the setbacks than the distances requested herein.
3. That the Applicant submit a landscaping plan to the Department of Planning and Zoning for review and approval prior to submission of the permit for the proposed garage.

Date **AUGUST 29, 2003**

Rebecca A. Bryant
Zoning Hearing Examiner